

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2134 of 2015 (O&M)

Date of decision: 26.03.2015

Ami Lal

..... Petitioner

Versus

M/s Hard Core Realtors Private Limited

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.

RAJESH BINDAL, J

Challenge in the present petition is to the order dated 27.2.2015 passed by the learned court below, whereby the application filed by the petitioner/plaintiff for framing additional issue was dismissed.

In the case in hand, the suit for recovery was filed by the petitioner/plaintiff on 10.5.2006. The issues were framed on 20.11.2006. The application for framing additional issue was filed on 13.2.2015, at the stage, when the evidence was over and the case was fixed for rebuttal evidence, if any and arguments. Learned court below having dismissed the application filed by the petitioner/plaintiff, he is before this Court.

Learned counsel for the petitioner submitted that at the time of framing of the issues, the entire pleadings were not considered. The stand taken by the respondent/defendant in the written statement was that sum of ₹ 22,00,000/- was paid with the consent of the petitioner to Prabhu, co-sharer of the petitioner in the land. The aforesaid fact was denied by the petitioner while filing replication. The onus to prove that fact lies on the defendant, who had taken a specific plea in the written statement. As correct issue had not been framed on the basis of the pleadings of the parties, the error was required to be corrected.

Having heard learned counsel for the petitioner, I do not find any merit in the present petition.

As has already been noticed above that after framing of issues on 20.11.2006 the evidence of the parties was completed. Thereafter, plea was taken that the stand taken by the plaintiff in the replication already filed by

the petitioner/plaintiff was not considered while framing the issues. An application was filed to correct the interim order dated 20.11.2006 on 30.4.2007. The prayer made therein was that replication filed by the petitioner had not been noticed in the order. The same was allowed on 23.4.2009 correcting the interim order passed on 20.11.2006. When the replication had already been filed even at that stage, the petitioner never thought of raising the point that correct issues had not been framed. Not only this, even during the entire process when the evidence was being led either by the petitioner/plaintiff or by the respondent/defendant, no plea was raised that the issues had correctly not been framed as per the pleadings of the parties. The grievance was raised only after the conclusion of the entire evidence, when the case was fixed for rebuttal evidence, if any and arguments. While filing the application on 13.2.2015, the issue, which is sought to be framed has not been mentioned either in the application or pointed out at any time during hearing of the application for framing additional issue. All what was stated before the court is that the said issue arise out of the pleadings in para 6 of the written statement filed by the respondent/defendant. It was submitted at the time of arguments that onus of the issue sought to be framed will be on the respondent/defendant. Meaning thereby, trial which has already been concluded, will re-open on the new issue, which is sought to be framed by the petitioner. This will be nothing, but an effort to fill in the lacuna.

For the reasons mentioned above, the present petition is dismissed.

(RAJESH BINDAL)
JUDGE

26.03.2015

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